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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/421,713   | 10/20/1999  | LARRY A. WINTER      | 8567.72US01         | 4525             |
| 28164  | 7590        | 09/02/2005           | EXAMINER            |                  |
| ACCENTURE CHICAGO 28164<br>BRINKS HOFER GILSON & LIONE<br>P O BOX 10395<br>CHICAGO, IL 60610 |             |                      | ABDI, KAMBIZ        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3621                |                  |

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/421,713

Applicant(s)

WINTER ET AL.

Examiner

Kambiz Abdi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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#### **DETAILED ACTION**

1. The prior office actions are incorporated herein by reference. In particular, the observations with respect to claim language, and responses to presented arguments.

- No claims are amended.
- Claims 6-7 are cancelled.
- Claims 1-5, and 8-41 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9 August 2005 has been entered.

#### ***Response to Arguments***

3. In response to applicant arguments regarding the new found reference, which has not been applied to the rejection of the claims that have been amended and submitted on 9 August 2005, examiner would like to emphasize that the examiner will be providing the rejection of the claims and the reasoning below.

4. Applicant's arguments filed 9 August 2005 have been fully considered but they are not persuasive for the following reasons:

5. Applicant has asserted that reference: Thomas, Samuel C., "An East Coast View: The Right Price for PJM," Public Utilities Fortnightly, v135n18, pg. 40-44, Oct. 1, 1997 ("The LMP reference") is not relevant to the present invention as claimed, examiner does not agree on this assertion. The fact remains that the current application as claimed is related to the post dispatch calculation of a clearing price for energy service. The limitation that the applicant has argued that is based on the location marginal price (LMP) is not persuasive. Examiner would like to bring to the attention of the applicant that there is no

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limitation in the claims that would contrast with the cited reference. Applicant is arguing that "LMP seeks to assess a 'congestion charge'" As it is clearly stated by the applicant the post dispatch calculation of the price of energy is determined at least by one real time condition. Further the applicant states the real time condition can be of load facilities. Examiner should point out that one skill in the art is clearly aware of that load facilities consist of distribution systems, transformers and transmission lines etc. It would also be clear to one skill in the art that transmission lines are susceptible to congestion based on the load that is demanded from them at the high demand period for electricity such as a very hot day in the summer that is a real time condition that dictates or effects the transmission of the electricity over transmission lines or natural gas through pipelines in a very cold day in winter. Therefore, clearly the LMP reference is a relevant art that can be applied to the current claimed invention. Specifically that this conditioned based post dispatch calculation of the price is specifically what the claims in the current application are directed to. For example step (e) of claim 1 states;

- (e) calculating a clearing price for the dispatched energy services for all the network areas in the energy system for the predetermined time interval, the calculating of the clearing price being performed after dispatching the energy services, wherein the clearing price is a price for a supply side bid arranged in step (d) at which quantities for supply side bids equals the energy services dispatched to the consumers in step (c), the clearing price being equal for all consumers that received energy services in step (c);

Further applicant argues that what the claims are reciting is "quantities for supply side bids equals the energy services dispatched to consumers...". Applicant is stating that the clearing price for all the users regardless of their location is going to be the same. However, what the claim specifically states is "calculating a clearing price for the dispatched energy services for ***all the network areas in the energy system...***" (Emphasis added). There are no clear parameters to distinguish, based on the language of the claim, what "***all the network areas in the energy system***" is consisting of. Examiners' understanding is that this "network areas" can be just one city's electrical network (Zone) or the energy network for the state level, regional, national, or even continental. As one skill in the art would clearly

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understand, the entire US and Canadian electrical network are interconnected and one can consider such a vast geographical area as consisting of one network area or divide such network area to smaller network areas, as small as a city or neighborhood level. Therefore, the price calculation that LMP reference proposes is clearly valid and applicable to the current claims, as they have been presented in their current language.

As for the argument made by the applicant in regards to "quantities for supply side bids equals the energy services dispatched to the consumers..." Examiner disagrees that the bids are not equal as it is clearly has been stated in the Gaus reference that the total bids are clearly equal to the total energy services delivered to the consumers (See Gaus figures 15-22 and associated text).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,343,277 to John Gaus et al. over U.S. Patent No. 6,047,274 to Jack J. Johnson et al., "CellNet Data Systems" web site content of 28 April 1998, and Thomas, Samuel C., "An East Coast View: The Right Price for PJM," Public Utilities Fortnightly, v135n18, pg. 40-44, Oct. 1, 1997. ("The LMP reference")

8. As for claims 1-5, 8-26, 40, and 41, Gaus teaches all of the claimed elements representing utilization of computer system based energy market place. Gaus teaches utilization of graphical interface, Internet as a method of communication. The roles and responsibilities of a moderator within an online energy auction market for energy market with well established steps of collecting bids from all sides,

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establishing a clearing price, creating and collecting information for settling the transaction, information such as usage from the end users, and collecting contract information, to finalize a transaction between providers of energy and customers (see Gaus figures 1- 3, 5, 7, 11-14, 16-18, 22, also see column 3, lines 13-64, column 4, lines 22-68, column 5, lines 1-68, and column 6, lines 1-68). What Gaus does not explicitly teach are, details on meter reading and billing process as well as the utilization of real time data collected on a predetermined interval. Although, Johnson clearly discloses the system and methods of collecting meter reading at the end user (see Johnson abstract, figures 1, 4, 6, 7, 10-16, column 4, lines 14-60, column 2, lines 22-57, column 7, lines 15-24, column 8, lines 61-63, column 16, lines 1-13) But Johnson is not clear on if the data collected is based on real time predetermined interval collection. However, "CellNet Data Systems" clearly discloses metering on a real time based on predetermined intervals for calculation of prices on electric delivery (See CellNet page 3, page 5, paragraph 3, page 6, paragraph 3-5, page 14 and 15, tables 1-3, and page 15, paragraph 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components mentioned above together in one system. As one can see utilization of a common marketplace which will help the energy providers, energy traders, and end users to benefit from efficient transaction amongst these entities. To provide such an environment as detailed information as possible it would be obvious how it can benefit to bring all the components of conducting business as such in one environment seamless to the users to expedite the entire transaction and make pricing more accurate. Therefore it reduces the cost of conducting an energy marketplace and mediating such a marketplace.

Further, Gaus is not explicit on the calculating the clearing price after dispatch of the energy services (See Gaus column 2, lines 28-45). However, The LMP reference clearly teaches the concept as well as specific calculation of the clearing price after the dispatched of energy services (See LMP page 5, paragraph 8-page 6, paragraph 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include the teachings of LMP to better control the pricing of the energy services dispatched and reducing cost for energy consumers.

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9. As for claims 27-39, Guas teaches all of the claimed elements disclosed in the claims mentioned here (see Gaus figures 1- 3, 5, 7- 9, 14-18, and 20-22) except Gaus does not explicitly refer to the metering and bill components. Also, Gaus does not explicitly teach the power generation and how the system disclosed will effect power generation. Although, Johnson does explicitly teach the elements of metering and billing (see Johnson figures 4, 6, 10, 15, 16, column 3, lines 2-16, column 4, lines 33-40, column 7, lines 15-29, column 8, lines 61-63, column 9, lines 55-59, column 10, lines 18-22, and column 16, lines 1-13) as well as disclosing the adjustment of power availability by providers based on end users' actual usage data available to them through the disclosed system (see Johnson column 7, lines 15-51). Johnson further teaches that by implementing direct metering and integrating settlement and billing components, it will expedite the speed of transactions and ease of conducting business once all the necessary information and data are aggregated through one system, making the process from the start (i.e. bidding) to the end (i.e. payment) taking place in one seamless operation. However, "CellNet Data Systems" clearly discloses metering on a real time based on predetermined intervals for calculation of prices on electric delivery (See CellNet page 3, page 5, paragraph 3, page 6, paragraph 3-5, page 14 and 15, tables 1-3, and page 15, paragraph 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components together in one system for the motivation stated above.

Further, Guas is not explicit on the calculating the clearing price after dispatch of the energy services (See Guas column 2, lines 28-45). However, The LMP reference clearly teaches the concept as well as specific calculation of the clearing price after the dispatched of energy services (See LMP page 5, paragraph 8-page 6, paragraph 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include the teachings of LMP to better control the pricing of the energy services dispatched and reducing cost for energy consumers.

10. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the

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teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.



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**Conclusion**

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the examiner should be directed to **Kambiz Abdi** whose telephone number is **(571) 272-6702**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James Trammell** can be reached at **(571) 272-6712**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see

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Any response to this action should be mailed to:

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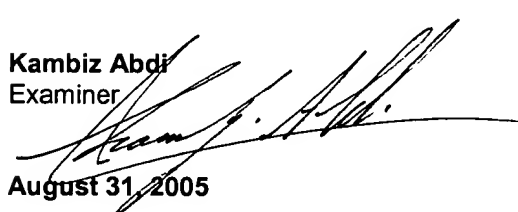
**(571) 273-8300** [Official communications; including After Final communications labeled "Box AF"]

**(571) 273-6702** [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the Examiner in the

**Knox Building, 50 Dulany St. Alexandria, VA.**

**Kambiz Abdi**  
Examiner

  
**August 31, 2005**